

## 46 Am. Jur. 2d Judges § 86

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### Judges

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### IX. Disqualification to Act in Particular Case

#### B. Grounds for Disqualification

##### 1. Grounds for Disqualification, in General

## § 86. Grounds for disqualification of judge, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  41 to 50

### Trial Strategy

[Disqualification of Trial Judge for Cause, 50 Am. Jur. Proof of Facts 3d 449](#)

It is the duty of the presiding judge under both the statutory and decisional law to excuse himself when he has an interest in the outcome of the case before him.<sup>1</sup> Moreover, a judge should recuse him- or herself when the judge has any doubt as to his or her ability to preside impartially or whenever his or her impartiality can be reasonably questioned.<sup>2</sup>

The Code of Judicial Conduct lists circumstances in which disqualification is necessary. Specifically, a judge must disqualify him- or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:<sup>3</sup>

- (1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding;
- (2) the judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is (a) a party to the proceeding, or an officer, director, general

- partner, managing member, or trustee of a party; (b) acting as a lawyer in the proceeding; (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or (d) likely to be a material witness in the proceeding;
- (3) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding;
  - (4) the judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within a specified time-frame made aggregate contributions to the judge's campaign that is greater than a specified amount;
  - (5) the judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy;
  - (6) the judge served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
  - (7) the judge served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;
  - (8) the judge was a material witness concerning the matter; or
  - (9) the judge previously presided as a judge over the matter in another court.

Neither the Canon in the Code of Judicial Conduct<sup>4</sup> nor the analogous rules governing the disqualification of a judge recite an exclusive list of circumstances which disqualify a judge and require recusal from a matter.<sup>5</sup> The situations in which a judge should grant a motion for recusal are varied and are not limited arbitrarily to cases of kinship, personal interest in the litigation, or prior representation of a party; there are areas beyond these where a judge may not sit in judgment. A trial judge not only has the right but also has the obligation to recuse him- or herself on his or her own motion if the judge is satisfied that there is good cause for believing that the failure to recuse might preclude a fair and unbiased hearing in judgment or might reasonably lead counsel or the parties to believe so.<sup>6</sup> A trial judge exceeds the proper scope of inquiry when he or she looks beyond the legal sufficiency of a verified motion for disqualification and challenges the truth of the bias allegation,<sup>7</sup> and that action alone warrants disqualification.<sup>8</sup>

On the other hand, a judge is not required to recuse him- or herself any time the judge has knowledge of, contact with, or an interest in the case over which he or she is presiding.<sup>9</sup> In the absence of a valid reason for the judge to disqualify him- or herself, therefore, the trial judge has the duty to preside over the case.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Conduct of Circuit Court judge before and during hearing regarding enjoining of county clerk from courthouse, including engaging in questioning of deputy clerks in manner that was like an investigator rather than a neutral and impartial arbitrator and that likely intimidated and upset clerks, did not reflect patience, dignity, or courtesy, and did not promote public confidence in judicial impartiality, in violation of rules of judicial conduct requiring judge to act in manner that promoted public confidence in the independence, integrity, and impartiality of the judiciary, to avoid impropriety and the appearance of impropriety, and to be patient, dignified, and courteous to those with whom judge dealt in official capacity. Code of Jud. Conduct, Canon 1, Rule 1.2; Canon 2, Rule 2.8(B). *Matter of Young*, 92 N.E.3d 628 (Ind. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 § 88.
- 2 *State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 323 S.E.2d 294 (1984).
- 3 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A).  
As to disqualification based on particular interests, see §§ 92 to 110.  
As to disqualification based on various relationships, see §§ 111 to 122.  
As to disqualification based on bias or prejudice, see §§ 123 to 144.  
As to disqualification based on prior participation in, connection with, or knowledge of the case or parties,  
see §§ 145 to 162.
- 4 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A).
- 5 *In re Advisory Letter No. 7-11 of Supreme Court Advisory Committee on Extrajudicial Activities*, 213 N.J.  
63, 61 A.3d 136 (2013).
- 6 *State v. Tucker*, 264 N.J. Super. 549, 625 A.2d 34 (App. Div. 1993).
- 7 § 190.
- 8 *Funt v. Nadler*, 530 So. 2d 1107 (Fla. 3d DCA 1988).
- 9 *People v. Thomas*, 199 Ill. App. 3d 79, 145 Ill. Dec. 344, 556 N.E.2d 1246 (2d Dist. 1990).
- 10 *Robinson Nursing and Rehabilitation Center, LLC v. Phillips*, 2016 Ark. 388, 502 S.W.3d 519 (2016);  
*Zavodnik v. Harper*, 17 N.E.3d 259 (Ind. 2014); *Rath v. Rath*, 2016 ND 46, 876 N.W.2d 474 (N.D. 2016); *In*  
*re McKenna*, 110 A.3d 1126 (R.I. 2015), reinstatement denied, 140 A.3d 158 (R.I. 2016); *O'Neill v. O'Neill*,  
2016 SD 15, 876 N.W.2d 486 (S.D. 2016).  
Judges have a duty not to disqualify themselves when there is no occasion to do so. *Sherrill v. Sherrill*, 373  
P.3d 486 (Alaska 2016).

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